

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: HENRY KWOFIE JA (PRESIDING)

BRIGHT MENSAH JA

CYNTHIA PAMELA ADDO JA

SUIT NO. H1/153/2022

DATE: 11TH MAY, 2023

- 1. THOMAS BARIMA WIREDU**
- 2. AKOSUA ASANTEWAA PLAINTIFFS/APPELLANTS**

VS.

- 1. REGINA ALLOTEY-PAPPOE**
- 2. THEOPHILUS ALLOTEY-PAPPOE**
- 3. ADDO AYI**
- 4. NII NMAI DEFENDANTS/RESPONDENTS**
- 5. FLORENCE ALLOTEY-PAPPOE**

J U D G M E N T

HENRY KWOFIE JA:

This present appeal has been launched by the plaintiffs/appellants against the judgment of the High Court, Accra delivered on the 28th of February, 2020. The trial High Court in that judgment dismissed the action of the plaintiffs and entered judgment in favour of the defendants on their counterclaim and made several consequential orders.

Dissatisfied with the said judgment, the plaintiff/appellants launched the instant appeal on the 22nd of April, 2020 on the following grounds:

- i. *The judgment is against the weight of the evidence adduced.*
- ii. *Further or other grounds of appeal to be filed on receipt of the record of appeal.*

It is noted for the record that no additional ground of appeal was filed by the plaintiffs/appellants. The relief sought from the Court of Appeal is for an order reversing the judgment of the trial Court. Before dealing with the arguments advanced for and against the appeal, I will give a brief background of the case. By a writ of summons filed on 4th July 2014, the plaintiffs claimed against the defendants as follows:

1. *Declaration of title to the parcel of land described in the schedule*
2. *Damages for trespass*
3. *Perpetual injunction restraining the defendants, for the 40 years lease agent and assigns from interfering with plaintiffs quiet enjoyment.*

The plaintiffs' case is that they are the beneficial owners of the subject matter land by virtue of a leasehold grant made to them in the year 2002. After the grant, the plaintiffs constructed commercial property consisting of offices and shops presently occupied by tenants. The plaintiffs converted their leasehold interest into a freehold in 2013 after having paid adequate consideration. It is the case of the plaintiffs that despite their long uninterrupted stay on the land, they were confronted by the defendants when the plaintiffs decided to construct a fence wall to separate their structure from the rest of

the property. The plaintiffs say that the defendants have no legal basis to prevent them from securing possession of the disputed land.

The defendants disputed the plaintiff's claim. It is the case of the defendants that the property under reference forms part of the estate of the late Allotey Coffie Pappoe who died intestate on 10th April, 1947 possessed of H/No. D423/4, Adabraka. On his death, letters of administration were granted to his four sons namely Edwin Allotey Pappoe, Benjamin Akwei Allotey, Emmanuel Nii Moi Allotey and Nathaniel Addo Allotey. It is also the case of the defendants that Nathaniel the only surviving son is domiciled in the United States of America. It is the case of the defendants that in the year 2002, the 1st and 2nd plaintiffs approached the 5th defendant who was then a friend of the 2nd plaintiff for a lease of the frontage of H/No. D423/4, Adabraka measuring 40x70 feet to build a commercial complex thereon comprising shops and offices for a period of 40 years. The defendants further plead that they are the owners of the land in dispute and that any building which the 1st plaintiff constructed on the land pursuant to an agreement dated 1st September 2002 was executed between two of the surviving three administrators and the 1st plaintiff only and that any purported sale of the property by Edwin Allotey and his son Nathaniel Allotey without the consent of Nathaniel Pappoe Allotey the only surviving administrator is invalid. It is further the case of the defendants that the land in dispute could not have been converted from leasehold to freehold by one of the two surviving administrators to the exclusion of the other surviving administrator. They further contended that Land Certificate No. GA 43199 was obtained by fraud and same must be revoked. The defendants further state that they only became aware of the Land Certificate a week after the death of Edwin Kpakpo Allotey when they prevented the 1st plaintiff from carrying out construction works on part of the land in dispute and add that since the 5th defendant is the sole surviving Administrator's lawful attorney, she had a claim of right to preserve the land and that the plaintiffs are not entitled to their

claim. The defendants therefore counterclaimed as against the plaintiffs for the following relief:

- a) An order revoking Land Certificate No. GA 43199 as having been obtained by fraud*
- b) An order directed at the Title Registration Division of the Lands Commission to expunge Land Certificate No. GA 43199 from the Land Title Register*
- c) An order revoking the Agreement dated 1st September 2002 between 1st plaintiff on the one hand and Ben Allotey and Edwin Allotey on the other hand.*
- d) A declaration that all that piece and parcel of land in extent of 0.06 hectares (0.14 of acre) more or less being parcel No. 246 Block 5 Section 041 situate at Adabraka in the Greater Accra Region as delineated on Registry Map No. 004/041/1991 in the Land Title Registry, Victoria Borg, Accra and being the piece or parcel of land shown and edged with pink therein still forms part of the estate of late Coffie Allotey Pappoe*
- e) A declaration that plaintiffs by bringing this action against 5th defendant have disputed their landlord's title*
- f) An order ejecting plaintiffs from the land in dispute for challenging their landlord's title.*
- g) Damages for Trespass and Recovery of Possession*
- h) An order for Perpetual injunction restraining plaintiffs their privies, agents or assigns from interfering in any way with the land the subject matter of dispute.*
- i) Any other or further orders as this honourable Court may deem fit.*

After a full trial, judgment was delivered in which the plaintiffs' claims were dismissed and all the reliefs set out in the defendants' counterclaim were upheld by the court. Dissatisfied with the decision of the trial court, the plaintiffs/appellants filed the instant appeal on 22nd of April, 2020 on the following grounds:

- a) The judgment is against the weight of evidence*
- b) Further or other grounds of appeal to be filed on receipt of the Record of Appeal.*

It is to be noted for the record that no additional ground of appeal was filed by the plaintiff/appellant. The relief sought from the Court of Appeal is for an order reversing the judgment of the trial Court.

The judgment appealed against is at pages 339 to 355 of the record of appeal. For the purpose of this appeal, the plaintiff/appellants will be referred to as the plaintiffs whilst the defendants/respondents will be referred to as the defendants collectively or 1st, 2nd, 3rd, 4th or 5th defendant as and when necessary.

Ground (a)

The appellant filed a sole ground of appeal faulting the trial courts judgment on the basis that the judgment is against the weight of evidence.

Arguing this ground of appeal Counsel for the plaintiff submitted that the defendants have nowhere claimed to be the landlords of the plaintiffs and that the earlier grant of a lease of the land to the plaintiffs was by Benjamin Akwei Allotey and Edwin Kpakpo Allotey. Benjamin Akwei Allotey was the father of the 2nd to 5th defendants and husband of the 1st defendant, Regina Allotey Pappoe. Counsel submitted that the lease Exhibit 4 shows that the two brothers leased the property to the plaintiffs as lessors with no recital indicating that the 2 brothers were administrators.

Counsel further submitted that the 5th defendant had knowledge of the transaction between the plaintiffs and the 2 brothers/lessors since he introduced the plaintiff to the lessors and also signed the lease Exhibit 4 as a witness. Counsel further submitted that the plaintiffs have never claimed to be owners of the whole house and that what was in dispute was the frontage of the house which was leased to the plaintiffs per exhibit 4.

Counsel submitted further that Nathaniel Addo Allotey the 3rd administrator was permanently resident in the USA and added that the 5th defendant who claimed to hold a Power of Attorney from Nathaniel Addo Allotey could not have acted as his attorney at the time of the execution of the lease on 6th September 2002 since the Power of Attorney is dated 25th June 2014. Counsel submitted that the plaintiffs having relied on the lease Exhibit 4 with the knowledge of the defendants especially the 5th defendant (who witnessed same) and having expended money and developed the land bona fide, the defendants are estopped by conduct from challenging the plaintiffs' occupation of the property.

Counsel asserted that the trial judge's reasoning and holding that she believed the 5th defendant that she made the appellants aware at the date of the transaction about the other administrators is not supported by the evidence. He asserted that the 5th defendant/respondent who witnessed Exhibit 4 in the state in which it was, condoned the misrepresentation of her father and uncle and cannot receive a benefit from that conduct.

Responding to the submissions of the plaintiff/appellant the defendants/respondent submitted that the deed of conveyance is between Edwin Kpakpo Allotey and the plaintiffs as indicated in Exhibit D and 10 attached to the plaintiffs and defendants witness statement respectively. Counsel for the respondents contended that the plaintiff's ought to have known at the time the leasehold agreement Exhibit 4 was converted into freehold that the property did not belong to the said Edwin Pappoe Allotey and the plaintiffs ought to have conducted further enquiries as required of a prudent purchaser of a freehold land and relied on the case of **Agyeman (substituted by) Banahene vs. Amana (2013-2014) 1 SCGLR 241** and **Hydrofoam Estates Ltd. vs. Owusu (2013-2014) 2 SCGLR 117 at 1130**.

Counsel for the respondent further contended that the plaintiffs could not produce evidence to show that Nathaniel Allotey Pappoe who was an administrator in the Letters of Administration dated 14th August 2007 was the same as the brother of Edwin Kpakpo Allotey and not the son of Edwin Kpakpo. Counsel further contended that Exhibit B was procured by fraud and was the basis for the execution of exhibits C and D and E and the said exhibits being tainted with fraud cannot be allowed to stand and the plaintiffs should not be allowed to benefit from the fraud.

The appellants' appeal is based on the sole ground that the judgment was against the weight of evidence adduced at the trial. It is trite that when an appellant complains that the judgment is against the weight of evidence, he implies that there were some pieces of evidence on record which if applied in his favour could have swayed the pendulum of the suit in his favour or certain pieces of evidence have been wrongly applied against him. The onus is therefore on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against. This therefore calls for a review of the entire evidence on record to come to the conclusion that the totality of the entire evidence supports the claim of the appellant. The authorities on this point are too numerous to set out. It suffices to refer to a few such as **Djin vs. Musa Baako (2007-2008) SCGLR 686; Tuakwa vs. Bosom (2001-2002) SCGLR 61, Oppon vs. Anarfi (2011) 1 SCGLR 556**

In the case of **Owusu Domena vs. Amoah (2016) 1SCGLR** the Supreme Court held that where the omnibus ground is pleaded, both factual and legal agreements could be made. The apex court held as follows per Benin JSC in holding 2:

"2) Where the appeal was based on the omnibus ground that the judgment was against the weight of evidence both factual and legal

arguments could be made when the legal arguments would help advance or facilitate a determination of the factual matters.

*Per curium: The sole ground of appeal that the judgment is against the weight of evidence throws up the case for a fresh consideration of all the facts and law by the appellate tribunal. We are aware of this court's decision in **Tuakwa vs. Bosom (2001-2002) SCGLR 61** on what the court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. The decision in **Tuakwa vs. Bosom** has erroneously been cited as laying down the law that, when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon. Sometimes, decision on facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law".*

The 1st plaintiff is the husband of the 2nd plaintiff. The 1st defendant Regina Allotey-Pappoe is the mother of the 2nd, 3rd, 4th and 5th defendants. The 1st defendant was the wife of one Benjamin Akwei Allotey (deceased). The said Benjamin Akwei Allotey was the father of the 2nd, 3rd, 4th and 5th defendants. The evidence shows that by a leasehold agreement dated 6th September 2002 Benjamin Akwei Allotey and his brother Edwin Kpakpo Allotey leased a portion of the frontage of H/No. D 423/4 Adabraka to the plaintiffs to build a commercial complex therein comprising shops and offices on a Build, operate and Transfer (BOT) basis for a period of 40 years. The lease agreement executed by the plaintiffs on one part and Benjamin Akwei Allotey and Edwin Allotey Pappoe on the other hand was tendered in evidence as Exhibit 4 and was witnessed by the 5th defendant Florence Allotey Pappoe.

In paragraph 2 of the statement of claim the plaintiffs pleaded as follows:

“2) The plaintiffs have constructed buildings on the land since 2002 which are being run commercially by themselves and their tenants”.

The defendants in answer to paragraph 2 of the plaintiff’s statement of claim pleaded in paragraph 5 of their amended statement of defence and counterclaim at page 286 of the Record of Appeal as follows:

“5) Paragraph 2 is denied and in further reply defendants say that any building which 1st plaintiff put up on the land in dispute was pursuant to an agreement dated 1st September 2002 executed between two of the surviving three Administrators namely Ben Allotey Pappoe and Edwin Allotey and 1st plaintiff only. Any subsequent purported sale of the property by Edwin Allotey and his son Nathaniel Allotey without the consent of Nathaniel Pappoe Allotey the only surviving administrator is invalid”.

The lease of September 2002 was tendered in evidence by the defendants as Exhibit 4 at page 168 to 171 of the Record of Appeal. In paragraphs 11,12,13,14,15 and 16 of her witness statement at pages 150-154 of the Record of Appeal, the 5th defendant testified as follows:

“11) I got to know 2nd plaintiff as bosom friend who confided in me that her husband 1st plaintiff was looking for land to put up a shop for her. This was about 17 years ago.

12) I convinced my parents my father Benjamin Nii Akwei Allotey Pappoe who was one of the administrators of the late Allotey Cofie

Pappoe and my mother who is the 1st defendant herein, to lease the property to 1st plaintiff.

- 13) The family represented by my late father and Edwin Kpakpo Allotey agreed to lease part of the land in dispute for 1st plaintiff to put up a shopping complex in accordance with the terms, stipulations and conditions agreed on*
- 14) I witnessed the execution of the agreement on 6th September 2002. I attach hereto and marked Exhibit 4 the said lease agreement*
- 15) By virtue of the 6th September 2002 agreement, the two above-named administrators purported to lease the land in dispute to 1st plaintiff for 40 years for valuable consideration.*

Both parties therefore agree that the land was leased to the plaintiffs for 40 years to build a shopping complex in September 2002.

Under cross-examination, the 1st plaintiff set out the structures they constructed on the plot at page 209 of the Record of Appeal:

- Q. You see the case that we are in court, how did you come to know the property in dispute*
- A. My wife was the friend of the 5th defendant. That is how I got to know the land*
- Q. Are you telling this court that because your wife was a friend simpliciter to the 5th defendant you got to know the land*
- A. Yes my lord*
- Q. Did your wife ever discuss anything about the land with you*
- A. About seventeen years ago, my wife had a shop in a building around the area of the land in dispute. My wife's shop was being taken away from her and so she told the 5th defendant who said her father had land which he wants to build stores on. The 5th defendant went and informed her father and she told us that her father*

requested to see us. We therefore went to see him. When we went to see her father, he said we could come and build on the land. At that time there were wooden structures on the land. He said we should build a two bedroom apartment on their side of the land. We built the two bedroom apartment and that is what the 2nd defendant herein is occupying

Q. Is that all you built on the land

A. No that is not all. After the building of the 2 bedroom apartment, we had to sit with her father so that he could give us documents to build. When we went to see him, he said he did not have the documents covering the land but that they were with his elder brother. I informed my wife upon reaching home that 5th defendants father says he does not have the documents covering the land but they were with his elder brother. By this time we had finished building the apartment. I therefore wondered what would happen if he the 5th defendants father's brother refused to give him the documents and that the building we had built would become theirs

Q. Did they bring the documents

A. Yes, they did but it was after a while

Q. You had an agreement to construct property on the land apart from the two bedroom apartment

A. Yes my lord

Further on at page 212 to 213 of the Record of Appeal the cross-examination of the 1st plaintiff continued as follows;

Q. The agreement under reference yesterday that you signed with the Allotey Pappoe's is Exhibit 4

A. Yes my lord

Q. By this you were to take the land, build on it and inhabit it for forty years (40)

A. Yes my lord

- Q. *The agreement is dated 1st September, 2002*
- A. *No, it is rather 6th September, 2002*
- Q. *By virtue of that agreement you were to put up a project consisting of the following; shops, offices and residential apartments, not so*
- A. *Yes my lord*
- Q. *It was to be a three storey building*
- A. *Yes my lord*
- Q. *You were supposed to complete the project within three (3) years*
- A. *Yes my lord*
- Q. *Did you complete the project within the three (3) years*
- A. *Yes my lord*
- Q. *In relation to how many were you able to construct within that structure*
- A. *I built nine shops*
- Q. *How many offices*
- A. *Some of the shops were used as offices*
- Q. *So all combined you had nine, not so*
- A. *Yes*
- Q. *What about the apartment which was supposed to be on top of the building*
- A. *I built two*
- Q. *Did you complete them*
- A. *Yes my lord*
- Q. *The one on top of the building did you complete it*
- A. *Yes my lord*
- Q. *I put it to you that you did not complete the apartment on top of the building. You just completed the shell of the building and for eleven (11) years you did not complete it*
- A. *My lard that is correct. People are occupying the apartment*

Q. It was not completed by you

A. I am the one who completed it

Q. when did you complete the shops and offices

A. it has been fourteen or fifteen years since I completed them

Clearly therefore on the evidence on record, the plaintiff initially built one apartment of 2 bedrooms now occupied by the 2nd defendant and then after the signing of the lease Exhibit 4, built a three (3) storey office complex consisting of nine shops and also built 2 additional apartments on top of the building. On the evidence, at the time of the commencement of the suit, the plaintiff had been in possession of this premises for an uninterrupted period of fourteen (14) to fifteen (15) years. Indeed under cross-examination the 5th defendant was asked at page 293 of the Record:

Q. You agree that the plaintiffs have been on the subject matter for close to sixteen (16) years

A. yes my lord since the agreement was signed in 2003

Q. you will agree with me that the plaintiffs have put up permanent structures on the subject matter.

A. Yes my lord based on the agreement signed

THE LEASE EXHIBIT 4

Both the plaintiffs and the defendants agree on the evidence that the plaintiff got access to the disputed land by virtue of the lease Exhibit 4. Exhibit 4 was signed between Ben Allotey Pappoe and Edwin Allotey Pappoe of the one part and Thomas Barima Wiredu of the other part. The record shows that the first 2 recitals of the lease exhibit 4 stated as follows;

- a) *The lessors lease to the lessee a plot of land which forms part of H/No. B425 Adabraka measuring 40 x 70 feet to hold same for 40 years that is from time of completion of each level and hired out.*
- b) *Whereas the lessors have agreed to lease the said portions to the lessee, the lessee hereby agrees to develop the said plot into shops, offices and residential apartments into 2/3 proxy respectively at his own expense. The lessee again is to pay goodwill amount of Forty Five Million (45m) cedis to the lessors before actual work begins. On completion of the said 3 storey shops and offices and the residential, the lessee is to give to the lessors the last floor which is the residential apartment, the rest of the ground and first floors goes entirely to the lessee"*

Whereas the plaintiffs contend that they were not aware that there were 4 administrators of the estate of Allotey Cofie Pappoe, the 5th defendant Florence Allotey-Pappoe who gave evidence on behalf of the defendants and was a witness to Exhibit 4 contended otherwise.

In her judgment, the trial judgment stated as follows at page 350 of the Record of Appeal:

"After having seen and heard from the parties, I am more inclined to accept the version of the 5th defendant that she told the plaintiffs all about the fact that there were four Administrators. She appeared a credible witness to me when she was testifying and I had no cause to doubt her story"

Is this finding by the trial judge justified?

Exhibit 4, the lease, was a document which was clear and spoke for itself and clearly and sufficiently described the parties to the lease as lessors and lessee. Both Ben Allotey Pappoe and Edwin Allotey Pappoe signed the lease as lessors and were so described in

Exhibit 4 whereas the 1st plaintiff signed as lessee. Nowhere is it stated in Exhibit 4 that the 2 were executing the lease as administrators of the estate of Allotey Cofie Pappoe. Indeed the 5th defendant signed Exhibit 4 as a witness.

It is provided by section 25 and 26 of the Evidence Act 1975 (NRCD 323) that:

- (1) *Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the document, or their successors in interest”*
- 26) *Except as otherwise proved by law, including a rule of equity, when a party’s own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in any proceedings between*
 - a) *That party or the successors in interest of that party, and*
 - b) *The relying person or successors in interest of that person.*

In the case of **Koanda vs. Tenassa Pharmaceutical Trading Co. Ltd. (2013-2014) 2 SCGLR 1104** it was held by the Supreme Court in holding 1 that:

“since on the evidence, the parties to the leasehold agreement were Tema Development Corporation (as lessor) and E.B. Asante (and not Asante Chemicals Store) (as Lessee), and since the parties to the instant action claimed their titles from the parties in the said leasehold agreement, they were bound by the description of the parties in the said leasehold agreement. Having determined the parties to the leasehold agreement, the court was precluded by the combined effect of the presumptions provided

in sections 24,25 and 26 of the Evidence Act, 1975 (NRCD 33) from considering any other evidence to the contrary because the presumptions to which they related, as provided in the Sections of the Act were conclusive in nature. African Distributors Co. Ltd vs. Customs, Excise & Preventive Services (2011) 2 SCGLR 955 cited.

Per curiam: it is difficult to comprehend that notwithstanding the very clear description of the lessee in the agreement, the question of ownership of the leased property had to be determined in the courts below by reference to other matters such as the covenants and the issue of receipts for ground rent. Evidence extrinsic to a document can only be resorted to when there is some ambiguity, but in the case before this court there was clarity in the description of the lessee that such a course that was embarked upon in the court below must be deprecated"

There was clarity in the description of the parties in the lease agreement Exhibit 4 and the 5th defendant ought not to have been allowed to lead extrinsic evidence to add to or complement the said exhibit 4. In our view the trial judge's finding that the 5th defendant told the plaintiffs all about the fact that there were 4 administrators amounts to oral or extrinsic evidence being allowed to contradict the clear words of a document and we accordingly set that finding aside

The 5th defendants assertion in the face of Exhibit 4 that she told the plaintiff that there were 4 administrators was a red herring and an obvious falsehood.

In **Effisah vs. Ansah (2005-2006) SCGLR 943**, it was held by the Supreme Court in holding 5 thereof that:

“(5) It was well-settled that an appellate court might interfere with the finding of a trial court or tribunal where specific findings of fact might properly be said to be wrong because the tribunal had taken into account matters which were irrelevant or had excluded matters which were relevant in law; or had excluded matters which were crucially necessary for consideration, or had, come to a conclusion which no court, instructing itself in the law, would have reached and where the findings were not inferences drawn from specific facts, such findings ought properly be set aside”

On the evidence on record, we find that the lessees leased the property to the 1st plaintiff in their own right as lessees and not as administrators. Indeed the lease Exhibit 4 speaks for itself and both the plaintiff and the defendants agree that the lease Exhibit 4 was valid.

Indeed, the evidence also shows further that it was the DW1 Yaoteykwei Quaye who went to the Public Records and Archives Administration (PRAAD) on 9th May 2014 to obtain an authenticated copy of Letters of Administration of Allotey Cofie Pappoe issued from the High Court, Accra on 12th March 1969(Exhibit 3) at page 166-167 of the Record of Appeal. Clearly this Exhibit 3 further supports the plaintiffs case that the lessors, did not as at 2002 have the letters of Administration in their possession and could not therefore have informed the plaintiffs that they were administrators of the estate of Allotey Cofie Pappoe

In her judgment, the trial judge stated as follows at pages 350 and 351 of the Record of Appeal as follows:

“The plaintiffs should have done, everything patiently possible in the transaction to investigate the root of title of the lessors. If they had made

the enquiry and they had decided to take the property from the two lessors, then that was to their detriment. If the other two administrators had agreed, they would have been shown documents indicating consent on their part. They took the lease at their own risk. Even if they had assured that there was a joint tenancy upon the death of Edwin Kpakpo Allotey the plaintiffs had a duty to investigate for the root of title.

*As stated in the case of **Agyeman (substituted by) Banahene vs. Anane (2013-14) 1 SCGLR** court held that:*

“Where the appellants title is derivative, he ought to demonstrate that the predecessor in title held a valid title for if the foundation was tainted the super structure was equally tainted”.

The court decided that a party whose title is derivative, must show that his predecessor had good title. It is clear from Exhibit 3 that Letters of Administration were obtained in the names of the four sons of Allotey Cofie Pappoe on 12th March 1969. Two administrators remained alive after the death of Benjamin Akwei Allotey. Any transaction involving the estate of the late Allotey Cofie Pappoe had to be handled together by the two surviving administrators Edwin and Nathaniel. However Edwin Allotey Pappoe procured another letters of Administration in his name and his son Nathaniel Allotey Pappoe when the 1969 Letters of Administration was still subsisting and had not been revoked or deposited in the Registry of the court. However, two concurrent grants of Letter of Administration cannot be made in respect of the same estate it is not in dispute that the plaintiffs have been in possession since 2002 by virtue of Exhibit 4. Flowing from the above, it is

my considered opinion that even though the plaintiffs did not plead bona fide purchaser that is what it is. It is the duty of every purchaser in a land transaction to conduct searches that the Republic of Ghana has made possible to satisfy oneself The plaintiffs should not have relied on the representation of Edwin Allotey Pappoe that his father had gifted the house to him, they provided no evidence of due diligence I find that Edwin Kpakpo Allotey's son Nathaniel Allotey Pappoe has been misrepresented in Exhibit B to create the false and fraudulent impression that he is the Nathaniel in America I therefore find that Exhibit B is a fraudulent document. I also find that Edwin Kpakpo Allotey acted fraudulently by executing Exhibit C with his son when he knew at the time that Nathaniel the Administrator lives in America. That being the case, I find further that Edwin Kpakpo Allotey's son Nathaniel could not join in the vesting of H/No. D423/4. In the light of the above, Exhibit B, and C, are not valid since Edwin Allotey Pappoe alone could not legitimately execute Exhibit D to the plaintiffs, it passed no title to them. Consequently Exhibit D which converted its leasehold into a freehold is not valid and cannot vest title in the plaintiffs having been obtained fraudulently. It is trite that fraud vitiates everything".

It is indeed trite that fraud vitiates everything. Reference the following cases which illustrate that because fraud vitiates every conduct, an allegation of fraud, if proven and sustained, would wipe and sweep away everything in its trail as if the thing had never existed: **Dzotope vs. Hahormene III (No.2) (1984-86) 1 GLR 294 C.A;** **West Coast Dyeing Industry Ltd, In Re: Adams vs. Tandoh (1984-86) 2 GLR 561 at 605** per Osei Hwere JA (as he then was) and **Jonesco vs. Beard (1930) AC 298 at 301-302.** In Kerr on

Fraud and Mistake (7th edition) at page 3 the author stated that *“fraud vitiates everything, even judgments and orders of the Court”*

Based on her findings of fraud against Edwin Allotey Pappoe the trial judge found that Exhibits B, C and D were all fraudulent documents and did not pass any title to the plaintiffs.

Exhibit B is letters of administration dated 14th May 2007 in respect of the estate of Allotey Cofie Pappoe granted to Edwin Kpakpo Allotey and one Nathaniel Allotey Pappoe. Exhibit C is the Vesting Assent vesting H/No. D 423/4 in Edwin Kpakpo Allotey as the sole beneficiary of the house. Exhibit D is the Deed of Conveyance dated 17th July 2013 conveying House No. D423/4 from Edwin Kpakpo Allotey to the plaintiffs. The record of appeal shows that although these exhibits were tendered by the plaintiffs, there is no doubt that these exhibits were procured by Edwin Kpakpo Allotey one of the lessors in Exhibit 4. Clearly therefore as the trial judge herself found, the fraud if any, is attributable to the said Edwin Kpakpo Allotey and not the plaintiffs. That fraud, which vitiated everything, was perpetrated by Edwin Kpakpo Allotey who was the brother of Benjamin Allotey Pappoe the other lessor. Benjamin was the father of the 2nd, 3rd, 4th and 5th defendants and husband of the 1st defendant. The trial judge took the view that Exhibits B, C and D did not pass anything because they were procured through fraud. This finding of the trial judge was based on her finding at page 352 of the Record of Appeal wherein she stated thus:

“I find that Edwin Kpakpo Allotey’s son Nathaniel Allotey Pappoe has been misrepresented in Exhibit B to create the false and fraudulent impression that he is the Nathaniel in America. I therefore find that Exhibit B is a fraudulent document. I also find that Edwin Kpakpo Allotey acted fraudulently by executing Exhibit C with his son when he knew at

the time that Nathaniel the administrator lives in America. That being the case, I further find that Edwin Kpakpo Allotey's son could not join in the vesting of H/No. D423/4. In the light of above, Exhibit B and C are not valid. Since Edwin Allotey Pappoe alone could not legitimately convey Exhibit D to the plaintiffs, it passed no title to them. Consequently, Exhibit E which converted the leasehold into freehold is not valid and cannot vest title in the plaintiffs having been obtained fraudulently. It is trite that fraud vitiates everything"

Clearly, if Edwin Kpakpo Allotey one of the lessors is guilty of fraud which invalidated Exhibits B, C, D and E and did not pass title, then the plaintiffs, who had to the knowledge of the defendants, expended huge sums of money to build the commercial complex and apartments some of which were occupied by some of the defendants should not suffer for the fraud of the said Edwin Kpakpo Allotey, a member of the defendants family. In addition, the record also shows that the 2 lessors had received huge sums of money from the plaintiffs as consideration before the construction of the shopping complex. In any case, as the evidence shows, there was no evidence whatsoever that the plaintiffs were aware of any administrators apart from the 2 lessors, Edwin and Benjamin.

The fraud of Edwin Allotey Pappoe if at all, should not detract from the validity of the leasehold transaction in Exhibit 4 which the parties agree was valid. The trial judge having declared Exhibit E as not being valid, then proceeded to further find that the plaintiffs had by Exhibit E challenged the title of their grantors and were liable to forfeit the lease. Relying on cases like **Safo vs. Badu (1977) 2 GLR 63** and **Adu Sarkodie vs. Karam & sons Ltd (1975) 1 GLR 411** she held that the plaintiffs have repudiated the title of the defendants by virtue of Exhibit E the Land Title Certificate.

In our view, having regard to the fact that the fraud was perpetrated by Edwin Allotey Pappoe, one of the lessors which led to the execution of the Exhibits B, C, D and invariably Exhibit E, it would be manifestly unjust to forfeit the lease. This would have the effect of allowing the defendants, who are family members of Edwin Allotey Pappoe to unjustly enrich themselves and benefit from the fraud of a member of their family. A party must not be allowed or permitted to benefit from his wrongful acts. See the case of **Obeng and others vs. Assemblies of God Church, Ghana (2010) SCGLR 300; Ndoley vs. Iddrisu (1979) GLR 559; Mahama vs. Soli (1977) 1 GLR 215.**

The trial judge in her judgment overlooked the role of the 5th defendant Florence Allotey Pappoe in the execution of the original leasehold agreement Exhibit 4 and the fact that the said 5th defendant exhibited utmost bad faith. The record shows that the 5th defendant who was a close friend of the 2nd plaintiff was instrumental in getting her father Benjamin Allotey Pappoe, one of the lessors and his brother Edwin to grant the frontage of the building to the plaintiffs in respect of the leasehold agreement, Exhibit 4. She also signed Exhibit 4 as a witness for the lessors. All this while, the record shows that she did not disclose to the plaintiffs that the lessors were administrators of the estate of Allotey Cofie Pappoe. And yet, after the plaintiffs had constructed the commercial complex, she turned around and procured a Power of Attorney from Nathaniel Addo Allotey-Pappoe who is domiciled in the United States claiming that the said Nathaniel was a Co-administrator of the estate of Allotey Cofie Pappoe. That Power of Attorney dated 25th June 2014 tendered by the defendants as exhibit 1 is at pages 32 to 33 of the Record of Appeal. This Power of Attorney was obviously procured by the 5th defendant in anticipation of this litigation, having been executed in the United States nine (9) days before the plaintiffs issued their writ of Summons.

In any event, it is worth noting that the said Nathaniel Allotey-Pappoe was not a party to the suit and was never joined to the suit by the defendants and the 5th defendant was sued and fought this case in her personal capacity. Given her instrumental role in the execution of the leasehold agreement Exhibit 4, her conduct in seeking to forfeit the buildings the plaintiffs had put up consequent upon Exhibit 4 was most despicable and dishonest.

In any event, the plaintiffs could not have repudiated the title of the defendants by virtue of Exhibit E as found by the trial judge as the defendants were not the landlords of the plaintiffs. For the law is that a licensee or tenant who denies the title of his licensor or landlord forfeits his or her interest. See the case of **Antie & Adjuwuah vs. Ogbo (2005-2006) SCGLR 49**.

In our view, having regard to the fact that the defendants were not the landlords of the plaintiffs, the trial judge was in error and we set aside the order of forfeiture made by the trial judge.

On the whole having reviewed the entire evidence and having regard to our finding that the leasehold agreement Exhibit 4 between the lessors and the lessee is valid, we will amend the reliefs sought by the plaintiffs and in lieu of relief (i), grant the plaintiffs a declaration that the leasehold agreement Exhibit 4 is valid and accordingly restrain the defendants from interfering with the plaintiffs' occupation of the leased premises during the tenure of the lease.

We are further of the view that the trial judge was in error when she granted wholesale the defendants counterclaim as set out in the amended statement of defence and counterclaim (page 143 to 149 of the Record of appeal). Accordingly we set aside reliefs (c), (e), (f), (h) and (i) thereof that is to say we set aside reliefs:

- c) *An Order revoking the Agreement dated 1st September, 2002 between 1st plaintiff on the one hand and Ben Allotey Pappoe and Edwin Allotey on the other hand.*
- e) *A declaration that Plaintiffs by bringing this action against 5th Defendant have disputed their landlord's title*
- f) *An order ejecting the Plaintiff from the land in dispute for challenging their landlord's title.*
- h) *Recovery of Possession*
- i) *An order of Perpetual Injunction restraining Plaintiffs, their privies, agent or assigns from interfering in any way with the land the subject matter of dispute*

No order as to costs.

SGD

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**JUSTICE HENRY KWOFIE
(JUSTICE OF THE COURT OF APPEAL)**

SGD

I AGREE

.....

**JUSTICE P. BRIGHT MENSAH
(JUSTICE OF THE COURT OF APPEAL)**

SGD

I ALSO AGREE

.....

JUSTICE CYNTHIA PAMELA ADDO
(JUSTICE OF THE COURT OF APPEAL)

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